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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,337	04/17/2000	Klaus-Peter Zeffler	2345/110	4964
7590	06/01/2004			EXAMINER KIM, DAVID S
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			ART UNIT 2633	PAPER NUMBER 17
DATE MAILED: 06/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

X

Advisory Action	Application No.	Applicant(s)
	09/462,337	ZEFFLER ET AL.
	Examiner	Art Unit
	David S. Kim	2633

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on 03 May 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.

Claim(s) objected to: none.

Claim(s) rejected: 14-23 and 27.

Claim(s) withdrawn from consideration: none.

8. The drawing correction filed on _____ is a) approved or b) disapproved by the Examiner.

9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.

10. Other: See Continuation Sheet

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments filed on 03 May 2004 regarding the rejections under 35 U.S.C. 103 have been fully considered but are not persuasive. Applicant presents two points.

Regarding the first point, Applicant states,

"the Office Action suggests that the implementation of the signaling and control information would have been obvious to a person of ordinary skill in the art. Applicant respectfully disagree and request evidence of such" (Paper No. 15, p. 8, 1st paragraph).

Examiner respectfully points to Widmer et al. to show the implementation of signaling and control information (Widmer et al., col. 1, lines 15-20). Thus, Applicant's first point is not persuasive.

Regarding the second point, Applicant refers to a Federal Circuit case to argue that there is no "specific understanding or principle within the knowledge of a skilled artisan" that would motivate a person having no knowledge of the claimed subject matter to "make the combination [of Widmer et al. and Nakamura et al.] in the manner claimed" (Paper No. 15, p. 8).

Examiner respectfully notes that Widmer et al. teaches that, for multiple reasons, it is often required to transmit signaling and control information in digital transmission systems in which telephone and/or data channels are bunched and transmitted over links and/or cable (Widmer et al., col. 1, lines 9-24). Widmer et al. then proceeds to disclose an advantageous method for transmitting signaling and control information in digital transmission systems (Widmer et al., col. 1, lines 25-46). Nakamura et al. also teaches digital transmission systems in which telephone and/or data channels are bunched and transmitted over optical fiber links and/or cables (Nakamura et al., multiplexers in Figures, col. 1, lines 14-43, col. 15, lines 41-55). The systems of Nakamura et al. also employ the transmission of signaling and control information (Nakamura et al., note control microprocessor units MPU 85 throughout the Figures and corresponding description in the specification). Accordingly, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to implement the advantageous method of Widmer et al. for transmitting signaling and control information in the networks/systems of Nakamura et al. From the perspective of Widmer et al., one of ordinary skill in the art would have been motivated to combine Widmer et al. and Nakamura et al. since larger capacity and higher speed transmissions are gained through the WDM/TDM optical fiber networks of Nakamura et al. (Nakamura et al., abstract, col. 1, lines 23-36). From the perspective of Nakamura et al., one of ordinary skill in the art would have been motivated to combine Widmer et al. and Nakamura et al. since it is possible to transmit signaling and control information without intervening in or modifying existing facilities, nor altering the structure of original useful information, through the method of Widmer et al. (Widmer et al., col. 1, lines 20-28). In view of this case of obviousness, Examiner considers it difficult to consider Applicant's point to be convincing. Thus, Applicant's second point is not persuasive.

Summarily, Applicant's arguments are not persuasive. Thus, Examiner respectfully maintains the standing rejections.

Continuation of 10. Other: Applicant's argument filed on 03 May 2004 regarding the rejection of claim 18 under 35 U.S.C. 112 has been fully considered but is not persuasive. Applicant points to portions of the specification as support (Applicant's specification, p. 5). After review of this portion of the specification, Examiner respectfully notes that the specification appears to simply recite the same language used in the claims. That is, the specification provides no further definition of the degree of "shortness" of the "short intervals" in claim 18. Applicant suggests replacement of the term "short" with the term "brief" so that the claim language recites "brief intervals" (Paper No. 15, p. 3, claim 18, p. 7, 1st paragraph). However, "brief" is also a relative term which renders the claim indefinite. Thus, Applicant's argument is not persuasive. Accordingly, Examiner respectfully maintains the standing rejection.

Additionally, Applicant invited Examiner for possible language amendment guidance (Paper No. 15, p. 7, 1st paragraph). In response, Examiner respectfully offers the following suggestions:

- Simple removal of the term "short" or "brief" from the claim language would broaden the scope of the claim and overcome the standing 112 rejection.
- Claim 18 introduces two kinds of "intervals." The first kind comprises the "short intervals." The second kind comprises the "variable duration time intervals." Applicant could adjust the claim language to define the length of the first kind of "intervals" by relating this length to the length of the second kind of "intervals." The specification appears to imply that the first kind of "intervals" are shorter than the second kind of "intervals" (Applicant's specification, p. 5, lines 25-27). Any claim language that captures such a relation would adequately define the length of the first kind of "intervals" and overcome the standing 112 rejection.


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